

**STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF FINANCIAL INSTITUTIONS**

IN THE MATTER OF:

CHECKCASH USA, INC.

DOCKET NO. 03.00-100710J

ORDER

THIS ORDER IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **April 17, 2009**.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 EIGHTH AVENUE NORTH, 8th FLOOR
NASHVILLE, TENNESSEE 37243-0307

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472**. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF FINANCIAL INSTITUTIONS**

DEPT. OF FINANCIAL INSTITUTIONS,)
COMPLIANCE DIVISION,)
)
Petitioner,)
)
v.)
)
CHECKCASH USA, INC.,)
)
Respondent.)

Docket No.: 03.00-100710

TDFI No.: 08-31-C

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NOTICE OF DEFAULT AND INITIAL ORDER

This matter came to be heard on March 19, 2009, at 9:30 a.m. central standard time, before Administrative Judge Marion P. Wall of the Administrative Procedures Division of the Tennessee Department of State, sitting for the Commissioner of the Tennessee Department of Financial Institutions (hereinafter, "Commissioner"). The Compliance Division of the Tennessee Department of Financial Institutions (hereinafter, "Petitioner") was represented by Derek Church, a staff attorney with the Department of Financial Institutions (hereinafter, "Department"). Attorney Thomas A. Snapp filed a Response in this matter on behalf of CheckCash USA, Inc. (hereinafter, "Respondent"), but neither Mr. Snapp nor any other attorney appeared at the hearing for the Respondent.

Judge Marion P. Wall is vested with jurisdiction to hear this matter on behalf of the Commissioner pursuant to Tenn. Code Ann. § 45-1-105 and the Check Cashing Act of 1997 as amended, at Tenn. Code Ann. §§ 45-18-101 *et seq.* (hereinafter, "Check Cashing Act"). This matter is a contested case proceeding pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, *et seq.*, initiated by the

Petitioner seeking an order directing the Respondent to: (1) refund the fees, totaling six thousand one hundred and ninety-one dollars and sixty-five cents (\$6,191.65), that it collected in violation of the Check Cashing Act; (2) cease and desist from conducting further unlicensed check cashing transactions; and, (3) pay a civil penalty of up to one hundred seven thousand dollars (\$107,000).

After consideration of the pleadings, the argument of counsel, and the entire record as a whole, it is **DETERMINED** that the Respondent **SHOULD** be ordered to make refunds and civil penalties as requested by the Petitioner. Said decision is based on the Order of Default, Findings of Fact, and Conclusions of Law stated below.

I. ORDER OF DEFAULT

At hearing of this matter on March 19, 2009, the Petitioner's motion for default was granted pursuant to Tenn. Code Ann. § 4-5-309(a) after the Respondent failed to have a representative appear at the hearing, after having proper notice thereof. The record shows that the Respondent was served with a Notice of Opportunity for a Hearing and a Notice of Charges on April 7, 2008, and that the Respondent submitted a Response to Notice of Charges on May 5, 2008, in which counsel for the Respondent stated that the Respondent did not request a hearing on the Notice of Charges. The record also shows that this court issued an Order on February 10, 2009 setting this matter to be heard on March 19, 2009, which was sent to the attorneys for the Petitioner and the Respondent at their most recent addresses on file with the court. Further, the record shows that, although Mr. Church spoke with Mr. Snapp on February 27, 2009 regarding continuance of the hearing and then forwarded to Mr. Snapp an Agreed Order of Continuance for his signature, Mr. Snapp failed to return the signed Order to Mr. Church and no Order of

Continuance was entered by the court. In addition, the record shows that on March 10, 2009, Mr. Church sent an email to both Mr. Snapp and Judge Wall to confirm that the hearing was still set for March 19, 2009 at 9:00 am CST at the Department, 414 Union St., 10th Floor, Nashville, Tennessee 37219. Having held the Respondent in **DEFAULT**, the matter was tried as uncontested.

II. FINDINGS OF FACT

1. The Respondent is a Tennessee for-profit corporation whose principal office is located at 7824 Kingston Pike, Knoxville, Tennessee 37919. At all times relevant hereto, the Respondent's President has been Les Kefauver (hereinafter, "Kefauver").

2. On or about October 1, 2001, the Department issued the Respondent license number 1528 (hereinafter, "License") to operate a check cashing business at 3419 Chapman Highway, Knoxville, Tennessee 37920 (hereinafter, "Location 1"). On or about November 8, 2007, the Petitioner received a letter from Kefauver, which stated that the Respondent had closed Location 1 effective November 3, 2007. Enclosed with the letter was the License.

3. The License was closed by the Department effective November 8, 2007, based on the Respondent's surrender of the License and all rights and privileges associated with it.

4. On or about February 7, 2008, the Petitioner conducted an on-site examination at 4409-D Chapman Highway, Knoxville, Tennessee 37920 (hereinafter, "Location 2"), pursuant to Tenn. Code Ann. § 45-18-113(b), for the purpose of determining any violations of the Check Cashing Act.

5. The Department has never issued a check cashing license to the Respondent to operate a check cashing business at Location 2.

6. Pursuant to its examination, the Petitioner found records showing that the Respondent cashed a total of one hundred seven (107) checks between January 14, 2008 and February 6, 2008 from Location 2 for a fee, with total fees on the transactions amounting to six thousand one hundred and ninety-one dollars and sixty-five cents (\$6,191.65). Said records included eighteen (18) "Daily Check Cashing Logs," which were admitted into evidence, and which identify customers' names, transaction dates, check amounts, cash to the customers, and the fees paid to the Respondent by each customer on each transaction.

7. After the Petitioner's examination was concluded, on or about February 8, 2008, Kefauver sent an email to Steve Henley, a Licensing Director for the Petitioner, which indicated that the Respondent's check cashing business formerly operated at Location 1 had been moved to Location 2. Said email also asked for a transfer of the check cashing license from Location 1 to Location 2. In response to the email, Mr. Henley informed Kefauver that the License could not be transferred from Location 1 to Location 2 because the License had previously been surrendered by the Respondent and closed by the Department.

8. As of January 14, 2008, when the Respondent began cashing checks for a fee from Location 2, the Respondent had actual knowledge of the requirement to obtain a license from the Department to operate a check cashing business, as evidenced by the fact that it had previously and recently been licensed by the Department to engage in such business at a different location.

III. CONCLUSIONS OF LAW

9. Regarding the licensing requirement of the Check Cashing Act, Tenn. Code Ann. § 45-18-104 provides that “No person shall engage in...the business of cashing payment instruments without first obtaining a license under the provisions of this chapter,” and that “A separate license shall be required for each location from which the business is conducted.” Persons offering a check cashing service without receiving a fee are exempt at Tenn. Code Ann. § 45-18-103(2).

10. The Findings of Fact are sufficient to establish by a preponderance of the evidence that the Respondent committed one hundred seven (107) separate violations of Tenn. Code Ann. § 45-18-104 by cashing one hundred seven (107) checks for a fee from a location (Location 2) that was not and has never been licensed by the Department under the Check Cashing Act.

11. For violations of the Check Cashing Act, Tenn. Code Ann. § 45-18-117 provides that the Commissioner may take any or all of the following actions:

- (1) Order the person to cease and desist violating the chapter or its rules and require the refund of any fees collected by such person in violation of this chapter; and
- (2) Order the person to pay to the commissioner a civil penalty...not to exceed one thousand dollars (\$1,000) for each violation or, in the case of a continuing violation, one thousand dollars (\$1,000) for each day that the violation continues.

12. The General Assembly has made clear that it considers unlicensed check cashing to constitute a serious offense at Tenn. Code Ann. § 45-18-119(d), which provides that “Any person who carries on an unauthorized check cashing business commits a Class E felony.”

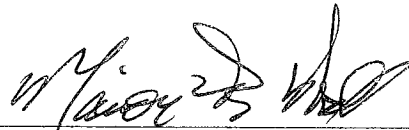
13. After considering the circumstances of this matter and the entire record,

including specifically that the Respondent did not contest the charges, that the Respondent had actual knowledge of the check cashing licensure requirement at the time it engaged in unlicensed check cashing, and that the General Assembly has made clear that unauthorized check cashing is a serious offense, it is appropriate to order the Respondent to refund the fees of six thousand one hundred and ninety-one dollars and sixty-five cents (\$6,191.65) that it collected in violation of the Check Cashing Act, and also to pay the maximum civil penalty authorized by law, in the amount of one hundred seven thousand dollars (\$107,000).

IV. ORDER

IT IS THEREFORE **ORDERED, ADJUDGED AND DECREED** that the Respondent, CheckCash USA, Inc., shall refund directly to the appropriate customers the fees of six thousand one hundred and ninety-one dollars and sixty-five cents (\$6,191.65) that it collected between January 14, 2008 and February 6, 2008 from its unlicensed check cashing business, and that it shall additionally pay to the Department of Financial Institutions a civil money penalty of one hundred seven thousand dollars (\$107,000).

This Initial Order entered and effective this 2ND day of APRIL, 2009.



Marion P. Wall, Administrative Judge

Filed in the Administrative Procedures Division this 2ND day of APRIL, 2009.



Thomas G. Stovall, Director

APPENDIX A TO INITIAL ORDER

NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Eighth Avenue N., Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.